Court No.2

In the High Court of Uttaranchal at Nainital.

First Appeal From Order No. 336 of 2001.
(Old No.436 of 1995)

(1) Smt. Sunita Thapliyal
Wife of late Sri Jagdish Prasad Thapliyal,
(2) Km. Swanm Prabha Thapliyal
D/o late Jagdish Prasad Thapliyal,
(3) Kumari Swati Thapliyal
D/o late Jagdish Prasad Thapliyal,
(4) Master Atul Thapliyal
S/o late Sri Jagdish Prasad Thapliyal,
All residents of Village Tenkhad, P.O. Mayal Gaon, Patti Nail Chami, District-Tehri Garhwal.

.....Claimants/Appellants

Versus

(1) M/s Sadaram and Sons,
Sunder Kivi Hawai Chappal Company (Pvt.) Ltd., Najibabad Road, Kotdwara, District-Pauri Garhwal
(2) M/s Sister Coy, J.P. Products
Kotdwara, District Garhwal.
(3) M/s New India Insurance Company Ltd.,
through its Branch Manager,
Branch Kotdwara, District- Pauri Garhwal.

.....Opp.parties/Respondents.

Sri Rakesh Thapliyal, learned counsel for the Claimants/appellants.
Sri Tanveer Alam Khan, learned counsel for the respondent No.3.

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Dated: 21st Aug., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the claimants/appellants under Section 173 of the Motor VehiclesAct, 1988 against the impugned judgment and order dated 01.8.1995 passed by the Motor Accident Claims Tribunal (Sessions Judge), Tehri, District Tehri Garhwal.

Brief facts giving rise to this appeal are that Jagdish Prasad Thapliyal was employed as Junior Engineer in Rural Engineering Service at Rudraprayag and was getting Rs. 3000.00 per month. Claimant No.1 is the deceased's widow while other claimants are her minor children. It was stated that on 08.12.1991 at about 10-11 a.m., the deceased was going from Rudraprayag to his village Tonkhand Muyal Gaon on his motor cycle by the Tilwara Ghansalim Road. The driver of Truck No. UP-06-0728 who was driving the truck rashly and negligently knocked down and hit the deceased near Village Paldiyargaon, Hailchami, Tehri Garhwal, as a result of the impact, the deceased fell down in the khud and died on the spot. The deceased was aged about 34 years. The claimants filed claim petition under Section 166 of the Motor Vehicle Act, 1988 for compensation of Rs. 8,60,000/- against the opposite parties.

On the pleadings of the parties, the learned Tribunal framed the following issues:-

(1) Whether the accident in which Jagdish Prasad Thapliyal was killed, had occurred due to rash and negligent driving of truck No. UP 06-0728 ? If so, to what amount of damages are the petitioners entitled?

(2) Whether no accident at all had taken place by aforesaid truck No. UP 06-0728 as alleged by respondents Nos. 1 & 2?

(3) Whether the aforesaid truck was insured for third party risk and the insurance company alone is liable to pay entire compensation as alleged by the respondents Nos. 1 & 2 in their joint written statements?

(4) To what relief, if any, are the petitioners entitled?

The learned Tribunal after recording oral and documentary evidence allowed the petition with costs and awarded compensation of Rs. 1,80,000/- against the respondent No.3. It was also ordered that the petitioners

shall be entitled to interest thereon at the rate of 15% per annum two months after the judgment. Feeling aggrieved the claimants have come up in this appeal for enhancement of the amount of compensation.

Learned counsel for the appellants challenged the findings given by the learned Tribunal on the quantum of compensation. He submitted that the learned Tribunal has held that the monthly earning saved for the family could be safely taken to be Rs. 1000.00. This finding is not correct. Admittedly, as per the evidence of P.W.1 Kamlesh Prasad, father of the deceased, he was receiving Rs. 2500/- per month. His age was 33 years. This fact has not been disputed and this finding has not been challenged before us. The deceased was the only earning member of the family and hardly he could spent 1,000/- towards his own expenditure including the expenditure of petrol and maintenance of motor cycle etc. Therefore out of Rs. 2500/- per month, Rs.1500/- per month the deceased could spend on his family. The Tribunal has wrongly taken it to be Rs. 1,000/- per month. Therefore, we hold as has been stated in the statement of his father. The Tribunal has also not applied the multiplier according to the Schedule appended to Sec. 163-A of the Motor Vehicles Act. As the age of the deceased was 33 years, therefore the multiplier could have been applied of '17'. Therefore, the compensation comes to Rs. 1500.00X12X17=Rs. 3,06,000/-.

The learned counsel for the Insurance Company submitted that it was not an application under Sec. 163-A of the Motor Vehicles Act, it was an application under Sec.166 of the Motor Vehicles Act. Therefore, the just compensation arrived at by the Tribunal cannot be interfered with. We do not find any force in the contention of the learned counsel for the Insurance Company. Since

the Tribunal has calculated the income of the deceased according to the age Schedule appended to Sec. 163-A of the Motor Vehicles Act on the date of judgment to arrive for just conclusion for the compensation to be paid to the claimants, the Tribunal ought to have been applied the multiplier as per Schedule. Therefore, we calculate the loss of dependency as aforesaid. In view of the judgment of Division Bench of this Court in ***A.O.No.252 of 2001, Smt.Rama Bansal and others versus Smt.Kusum Devi and others, decided on 17th Aug., 2004,*** wherein it has been held that for coming to a compensation under Section 166 of the Motor Vehicles Act, if no other evidence is led, then the aid of Schedule appended to Sec. 163-A of the Motor Vehicles Act can be taken. The contention of the learned counsel for the respondent-Insurance Company is rejected accordingly.

Learned counsel for the Insurance Company further contended that the rate of interest fixed by the learned tribunal is excessive. It may be reduced to 6%. We are of the opinion, that in the interest of justice the rate of interest is reduced from 15% to 8%.

The appeal is allowed. The impugned judgment and award dated 01.08.1995 is modified accordingly. The claimants/appellants shall be paid Rs. 3,06,000/-(Rupees three lakh six thousand) as compensation by the Opp. party/respondent No.3-New India Insurance Company alongwith interest at the rate of 8% (eight per cent) per annum from the date of filing of the claim petition till the date of payment.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh